

Response to Arguments

1. Applicant's arguments, see Remarks section, pages 4-10, filed July 9, 2000, with respect to claims 1, 2, 5-14, 16-19 have been fully considered and are persuasive in part. The previous 103 rejection of April 11, 2008 has been withdrawn, and an additional search has been performed.
2. However, arguments regarding previous 101 rejections are not persuasive, and Examiner maintains previous 101 rejections associated with claims 20 and 22 because the protocol stack, MAC and PHY layers are abstract implemented in an instrument (apparatus), which therefore makes the apparatus an abstract apparatus.

Claim Rejections - 35 USC § 101

3. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.
4. Claims 20, 22 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. Applicant is claiming with regards to independent claim 20, "an apparatus comprising a protocol stack, comprising a MAC layer and a PHY layer." The protocol stack, MAC and PHY layers are abstract concepts, thereby making the Applicants claimed apparatus "**an abstract apparatus,**" which does not meet the criteria for statutory invention. See MPEP 2106 Patent Subject Matter Eligibility. The same comments apply to dependent claim 22.

Allowable Subject Matter

3. Claims 1, 2, 5-14 and 16-19 are allowed over prior art.
4. The following is a statement of reasons for the indication of allowable subject matter:
The prior art fail to teach with respect to claim 1, 14 and 18, the start of a new flame within a codeword using a start-of-frame marker, wherein the start-of-frame marker may be located anywhere within the codeword after the synchronization byte.

Conclusion

5. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Prenell P. Jones whose telephone number is 571-272-3180. The examiner can normally be reached on 9:00-5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor Wing Chan can be reached on 571-272-7493. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Prenell P. Jones

October 23, 20008

/Wing F. Chan/

Supervisory Patent Examiner, Art Unit 2619

10/27/08